Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with (a) an application by the landlord for a monetary order and an order allowing retention of part of the security deposit in satisfaction of the claim; and (b) an application by the tenant for a monetary order. Both parties have requested recovery of the filing fee from each other. Both parties attended the hearing and had an opportunity to be heard.

Issue(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy originally began pursuant to a tenancy agreement between the landlord, the tenant and the tenant's then partner. The agreement was for a fixed term tenancy running for 18 months until February 28, 2016. The rent was $1500 payable in advance on the first day of each month. A security deposit of $750.00 was paid by the tenants on September 1, 2014. The tenants subsequently decided to go their separate ways and a new tenancy agreement was entered into between the landlord and the tenant on March 1, 2015. Again, the agreement was for a fixed term of 18 months ending on August 31, 2016. The rent under the new agreement was reduced to $1200.00. The original security deposit of $750.00 was carried over to the new agreement.

The rental unit is the upstairs portion of a detached home. The landlord stated at the outset of the tenancy that she sometimes used the basement as an office. However, according to the tenant, in April of 2015 the landlord moved her twenty-something daughter into the basement suite. The tenant wrote as follows in her written submissions:

> *"She [the landlord] advised me that she [the daughter] is not a partier and doesn't drink because she has had an issue with alcoholism in the past. She said that her daughter is under strict orders that the place is to sleep and study. [The daughter] WAS NOT renting the suite when we signed the lease in September 2014 and we were under NO impression that [the landlord] had desired to rent it to her daughter.*

There was alcohol left outside on the patio wall as well as on the table where the downstairs tenant left her cigarettes. Of course this would be cleaned up when her mother came to visit, she's not supposed to be drinking due to past addiction issues…

I am basing my Loss of Enjoyment of the rental property on recurring events which disallowed my children to enjoy the back yard safely, to having high strangers on my deck stairs, to having colleagues of [daughter] knocking on my door at 7:30 a.m. on a Sunday asking if she is home because they are there to pick her up for work but she isn't answering downstairs door so she thought she lived upstairs. I am basing it on a parade of unsavoury men coming and going from the property visiting the downstairs suite. I am basing it on not feeling safe in the home where I chose to raise my two young children."

The tenant testified that she tried to tolerate the situation with the downstairs tenant but it got worse and by July 6th she was "done" so she gave the landlord notice that she was vacating. This is the email exchange that occurred:

On July 7, 2015 the tenant sent the following email to the landlord:

"Hi Jeanette, I will be vacating the premises on August 1, 2015 and will be available in the afternoon of the 1st to do a walk through, inspection and exchange of keys and damage deposit. Sincerely, Stacey"

On July 8th, the landlord responded by email as follows:

"Unfortunately you needed to give me a minimum of 30 days notice."

On the same day the tenant responded as follows:

"Okay then I will vacate on the 6th and I will pay you $232.20 for the days I am staying past the first. $1200/31=38.70x6=232.20

I will do a walk through with you on the 6th at a mutually designated time."

The landlord did not reply any further to the tenant so the tenant assumed that the August 6 move-out date was acceptable. Additionally, on July 30, the landlord sent the following email to the tenant.

"Good Morning S, Just to let you know that the new renters have access to the house as of 1:00 p.m. on the 6th of August. The inspection needs to be done prior to this time for damage deposit return. Please advise what time is suitable for you. Thanks, J"

During the hearing the landlord responded to the tenant's complaints about the downstairs tenant by saying that *"there were only two bad days involved with my daughter"* and that she (the landlord) had *"endured*" the noise from the tenant's suite before and after her marital separation. The tenant replied that she had only complained on two occasions about the daughter's conduct but that those two dates were not the only times she and her children were disturbed.

Analysis

Landlord's Claim

The landlord has made a monetary claim of $600 representing half the rent for August. The landlord makes this claim on the basis that she was able to find tenants to move in for August 15, 2015 otherwise her claim would have been for the full month of August. The landlord rightly points out that the tenant did not give sufficient notice and that normally the tenant would be liable for all of the August rent but there are circumstances in this case that change that.

Firstly, the tenant advised she would be out by August 6th – which she considered to be 30 days from July 6th – and the landlord seemed to acquiesce in that arrangement by not answering the tenant's email.

Secondly, the landlord further confirmed the August 6th move-out date in her email of July 30 wherein she specifically asks the tenant to be out by 1:00 p.m. on the 6th so that the new renters have access. The landlord even specified that the inspection would be done that day which means the tenant would have had to have all her things out by then.

Now it may well be that the landlord did not mean to say all that in her July 30 email but according to my reading of that email combined with the acquiescence on the tenant's July 8th email, I am not satisfied that the landlord has established a claim for the rent for the first half of August. **Rather, I find that the landlord is entitled to the equivalent of 6 days' rent as calculated above in the amount of $232.20.**

Tenant's Claim

The tenant has made a monetary claim as follows:

Return of July rent	$1200.00
Return of Security Deposit	750.00
TOTAL	**$1950.00**

I shall deal with each of these in turn.

Return of July rent ($1200.00) – The tenant has made a monetary claim of $1200.00 as compensation for loss of her right to quiet enjoyment. The tenant's claim is essentially that the landlord allowed her disruptive daughter to stay in the downstairs unit and failed to restrain the daughter's behaviour when it was brought to her attention. In this regard, Section 28 of the Act provides as follows;

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
> (c) exclusive possession of the rental unit…;
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In the present case, it is my understanding that the tenant feels her rights under subsections (a), (b) and (c) were breached. The tenant felt her privacy was violated by associates of the landlord's daughter, that she and her children suffered unreasonable disturbance as a result of the daughter's life style and associates and that the tenant no longer felt that the common areas – namely the back yard and deck stairs – were safe environments for her children to play in as a result of the comings and goings of the daughter's friends and the lifestyle of the daughter. The tenant testified that the landlord specifically said that no one would be renting the downstairs unit and that only the landlord would be using it as an office from time to time. It is my understanding that the tenant would have remained in the rental unit with her children had the problems with the landlord's daughter become so problematic.

I am satisfied that the tenant's right to quiet enjoyment was breached. The question then, is what is the appropriate amount of compensation? For guidance on this matter I refer to Residential Tenancy Policy Guideline No. 6 which deals with the Right to Quiet Enjoyment. For reference purposes, the relevant parts of the Guideline say as follows:

> Right to Quiet Enjoyment
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> Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.
>
> The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

· entering the rental premises frequently, or without notice or permission;
· unreasonable and ongoing noise;
· persecution and intimidation;
· refusing the tenant access to parts of the rental premises;
· preventing the tenant from having guests without cause;
· intentionally removing or restricting services, or failing to pay bills so that services are cut off;
· forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
· allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists**,** although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

Applying the above guideline to the present case, I make the following findings. First, I find that the landlord did not take adequate steps to remedy the situation vis a vis her daughter. This is particularly so given the fact that the downstairs unit was only supposed to be used as an occasional office by the landlord and not as an accommodation for her daughter. I further find that the nature of the interference suffered by the tenant was in the nature of *"unreasonable and ongoing noise*" and some *"intimidation*" given the apparent character of the daughters' associates and the activities taking place in the back deck area and people coming to the tenant's door. I find that the interference was not merely a "*temporary discomfort or inconvenience*". Rather, the interference was significant enough that the tenant felt she had to uproot and find a new place to live. This is no small effort for a mother of two.

In terms of the amount of compensation, I am to take into account the seriousness of the situation, the degree to which the tenant has been unable to use the premises and the length of time over which the situation has existed.

The landlord's daughter moved into the basement suite in April. The exact date is not clear to me from the evidence. However, the disruptions continued through July and the tenant moved out on August 6th. I will use four months as a basis for calculating the tenant's loss. I also find

that that the disruptions were serious enough to cause the tenant to want to vacate and that the tenant's use of the common areas of the residential property were curtailed by the activities in the back area.

In the result, I find that the tenant is entitled to $200.00 in compensation for each month that the disruptions continued. In other words, **I find that the tenant is entitled to a total award of $800.00 for loss of quiet enjoyment.**

Return of Security Deposit ($750.00) – I have already found that the landlord is entitled to retain $232.20 from the tenant's security deposit. I therefore order the landlord to return to the tenant the balance of the deposit in the amount of $517.80. There is no interest accrued on this amount according to the RTB interest rate calculator.

Conclusion

I order that the landlord retain the sum of $232.20 from the tenant's security deposit.

I order that the landlord pay to the tenant the sum of $1317.80. This order may be filed in the Small Claims Court and enforced as an order of that Court.

As both parties have been partially successful in their applications, I dismiss both parties' requests to recover the filing fees from each other.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 13, 2016

Residential Tenancy Branch